

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JAMES DIDIER,
Plaintiff,
vs.
NATIONSTAR MORTGAGE, LLC, et al.,
Defendants.

Case No. 2:16-cv-02127-JCM-CWH

SCREENING ORDER AND REPORT AND RECOMMENDATION

Presently before the court is pro se Plaintiff James Didier's application to proceed *in forma pauperis* (ECF No. 5), filed on September 23, 2016.

I. *In Forma Pauperis* Application

Plaintiff has submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, Plaintiff's request to proceed *in forma pauperis* will be granted.

II. Jurisdiction

Before this court may consider Plaintiff's complaint (ECF No. 1-1), it must determine whether it has proper jurisdiction over this matter. "Federal district courts are courts of limited jurisdiction, possessing only that power authorized by Constitution and statute." *K2 Am. Corp. v. Roland Oil & Gas, LLC*, 653 F.3d 1024, 1027 (9th Cir. 2011) (quotation omitted). Federal district courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Federal district courts also have original jurisdiction over civil actions in diversity cases "where the matter in controversy exceeds the sum or value of \$75,000" and where the matter is between "citizens of different States." 28 U.S.C. § 1332(a). "Section 1332 requires complete diversity of citizenship; each of the plaintiffs must be a citizen of a different state than each of the defendants." *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001). "If the court determines at any time that it lacks subject-matter jurisdiction, the

1 court must dismiss the action.” FED. R. CIV. P. 12(h)(3).

2 Here, Plaintiff’s claim does not invoke either diversity or federal question jurisdiction.
3 Plaintiff, a citizen of Nevada, does not allege that any of named Defendants Nationstar Mortgage,
4 LLC, Bank of New York Mellon, Aldridge Pite, LLP, or Carrington Real Estate Services are the
5 citizen of another state, so this claim cannot proceed under diversity jurisdiction. Neither does
6 Plaintiff raise any question of federal law, as the complaint alleges only state law claims of
7 unlawful eviction and fraud. The court therefore does not find it has jurisdiction over this matter.
8 The Court will dismiss Plaintiff’s complaint with leave to amend. If Plaintiff chooses, he may file
9 an amended complaint addressing the issues of jurisdiction noted above.

10 Additionally, Plaintiff is advised that if he files an amended complaint, the original
11 complaint (ECF No. 1-1) no longer serves any function in this case. As such, the amended
12 complaint must be complete in and of itself without reference to prior pleadings or other
13 documents. The court cannot refer to a prior pleading or other documents to make Plaintiff’s
14 amended complaint complete.

15 **III. Conclusion**

16 IT IS THEREFORE ORDERED that Plaintiff’s Application for Leave to Proceed *In Forma*
17 *Pauperis* (ECF No. 1) is GRANTED. Plaintiff will not be required to pay the filing fee in this
18 action. Plaintiff is permitted to maintain this action to conclusion without the necessity of
19 prepayment of any additional fees or costs or the giving of a security for fees or costs. This order
20 granting leave to proceed *in forma pauperis* does not extend to the issuance of subpoenas at
21 government expense.

22 IT IS THEREFORE ORDERED that the Clerk of the Court must file Plaintiff’s complaint
23 (ECF No. 1-1).

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1 IT IS RECOMMENDED that the complaint (ECF No. 1-1) be DISMISSED without
2 prejudice for the court's lack of jurisdiction in this matter. Plaintiff shall have leave to amend, if he
3 so chooses.

4 IT IS FURTHER RECOMMENDED that be given a deadline to file an amended complaint.

5 DATED: September 7, 2017

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8 C.W. Hoffman, Jr.
9 United States Magistrate Judge

10 **NOTICE**

11 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be
12 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has
13 held that the courts of appeal may determine that an appeal has been waived due to the failure to
14 file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit
15 has also held that (1) failure to file objections within the specified time and (2) failure to properly
16 address and brief the objectionable issues waives the right to appeal the District Court's order
17 and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153,
18 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).